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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 3RD & BATTERY 2 LLC,

9 Plaintiff,

10 v.

11 HARTFORD CASUALTY INSURANCE
12 COMPANY, *et al.*,

13 Defendants.

Case No. 2:19-cv-1903-MLP

ORDER

14 **I. INTRODUCTION**

15 This matter is before the Court on Plaintiff 3rd & Battery 2 LLC's motion for remand
16 (Dkt. # 7 ("Mot.")). Defendant Hartford Casualty Insurance Company ("Hartford") opposes
17 Plaintiff's motion. (Dkt. # 10 ("Opp'n").) Having considered the parties' submissions in support
18 and in opposition to the motion, the remainder of the record, and the applicable law, the Court
19 grants Plaintiff's motion for remand.

20 **II. BACKGROUND**

21 This case arises out of an insurance policy issued by Defendant Hartford to Defendant
22 SSA Acoustics LLP ("SSA"). (*See* Dkt. # 1-2 (Am. Compl.).) In October 2018, fire damaged
23 property owned by SSA. (*Id.* at ¶ 3.1.) SSA submitted claims for the damage to Hartford

1 pursuant to its insurance policy. (*Id.* at ¶ 3.2.) Hartford accepted coverage and adjusted the
2 claims. (*Id.*) SSA subsequently assigned its claims for future payments to Plaintiff. (*Id.* at ¶ 3.3.)
3 Plaintiff has incurred fees and expenses post assignment, which it asserts are covered under the
4 insurance policy with Hartford. (*Id.* at ¶ 3.5.) Plaintiff asserts Hartford has denied the validity of
5 the assignment from SSA to Plaintiff and refuses to issue payments. (*Id.* at ¶ 3.7.) Plaintiff
6 initiated this matter in King County Superior Court seeking damages and declaratory relief. (*See*
7 *Am. Compl.*)

8 Hartford removed this matter from King County Superior Court on November 22, 2019
9 based on diversity subject matter jurisdiction. (Dkt. # 1 (“Notice of Removal”).) On December 4,
10 2019, Plaintiff moved to remand arguing complete diversity is lacking as both Plaintiff and SSA
11 are Washington citizens. (*See Mot.*) In response, Hartford argues complete diversity exists
12 because Plaintiff fraudulently joined SSA as a defendant, or, in the alternative, SSA’s interests
13 are aligned with Plaintiff’s interests and therefore SSA should be considered a plaintiff for
14 jurisdictional purposes. (Opp’n.) Defendant Hartford also noted that at the time of removal,
15 Plaintiff had not yet served SSA. (Not. of Removal at 3.)

16 On January 27, 2020, the Court ordered Plaintiff to provide an update as to whether SSA
17 had been served. (Dkt. # 13.) On January 29, 2020, Daniel Frohlich, attorney for SSA, accepted
18 service of process on behalf of SSA and notified the Court that SSA does not consent to removal
19 of this matter to federal court.¹ (Dkt. # 14.) Plaintiff also submitted a response to the Court’s
20 order advising SSA had been served. (Dkt. # 15.)

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¹ Plaintiff also argued remand is warranted because Hartford removed the case without obtaining SSA’s
consent. (Mot. at 4.) This argument is now moot as SSA declined consent.

III. DISCUSSION

A. Legal Standards

A court has subject matter jurisdiction over an action when there is complete diversity of citizenship among the parties and the amount in controversy exceeds \$75,000.00. *Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 679 (9th Cir. 2006) (citing 28 U.S.C. § 1332(a)). Removal from state court to federal court is proper where the federal court would have original jurisdiction over the state court action. *Id.* at 679-80 (citing 28 U.S.C. § 1441(a)). However, courts strictly construe the removal statute against removal jurisdiction and must reject jurisdiction if there is any doubt as to the right of removal in the first instance. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). “The ‘strong presumption’ against removal jurisdiction means that the defendant always has the burden of establishing that removal is proper.” *Id.* (quoting *St. Paul Mercury Indent. Co. v. Red Cab Co.*, 303 U.S. 283, 288-290 (1938)).

B. Complete Diversity

Plaintiff argues the Court lacks jurisdiction over this matter because Hartford has made an insufficient showing of complete diversity of citizenship. (Mot. at 5-8.) Diversity subject matter jurisdiction requires complete diversity of citizenship among the parties. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996); 28 U.S.C. § 1332(a)(1). Complete diversity exists when the state citizenship of each plaintiff is different from the state citizenship of each defendant. *Id.* (citing 28 U.S.C. § 1332(a)). A corporation can be a citizen in two states: (1) its state of incorporation and (2) the state where its principal place of business, typically its headquarters, is located. 28 U.S.C. § 1332(c)(1); *Hertz Corp. v. Friend*, 559 U.S. 77, 93 (2010) (concluding that a principal place of business is “normally” a corporation’s headquarters).

1 Here, there is no dispute that both Plaintiff and SSA are citizens of Washington and that
2 Hartford is incorporated in Indiana with its principal place of business in Connecticut. (Notice of
3 Removal at ¶¶ 4, 5.) Rather, Defendant Hartford argues the citizenship of SSA should be
4 disregarded because it has been fraudulently joined as a defendant or that SSA should be
5 realigned as a plaintiff. (*Id.* at ¶¶ 5, 6.) The Court will address each argument in turn.

6 *I. Fraudulent Joinder*

7 Complete diversity is not required for removal based on diversity jurisdiction if the
8 nondiverse defendant (here, SSA) has been “fraudulently joined.” *Morris v. Princess Cruises,*
9 *Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001). “Joinder of a nondiverse defendant is deemed
10 fraudulent ... if the plaintiff fails to state a cause of action against a resident defendant, and the
11 failure is obvious according to the settled rules of the state.” *Id.* (internal quotation omitted).
12 Removing defendants are “entitled to present [] facts showing the joinder to be fraudulent.”
13 *McCabe v. General Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987). Removing defendants
14 bear this “heavy burden” given “both the strong presumption against removal jurisdiction and the
15 general presumption against fraudulent joinder.” *Hunter v. Philip Morris USA*, 582 F.3d 1039,
16 1046 (9th Cir. 2009) (internal quotations omitted). Thus, “[f]raudulent joinder must be proven by
17 clear and convincing evidence.” *Id.* at 1043. The standard for finding fraudulent joinder is not the
18 same as whether the plaintiff has stated a claim on which relief can be granted, but is more akin
19 to the “wholly insubstantial and frivolous” standard for dismissing claims under Rule 12(b)(1).
20 *Grancare, LLC v. Thrower by & through Mills*, 889 F.3d 543, 549 (9th Cir. 2018) “A federal
21 court must find that a defendant was properly joined and remand the case to state court if there is
22 a ‘possibility that a state court would find that the complaint states a cause of action against any
23 of the [non-diverse] defendants.’” *Id.* (citing *Hunter*, 582 F.3d at 1046 (emphasis in *Grancare*)).

1 Hartford argues Plaintiff fraudulently joined SSA to this action because the amended
2 complaint merely states there could be a judicable controversy between Plaintiff and SSA if the
3 Court agrees with Hartford in this action, without explaining the judicable controversy. (Resp. at
4 5.) Hartford's argument suggests Plaintiff has no real intention of prosecuting this action against
5 SSA because they have similar interests. However, Plaintiff argues it has stated a facially valid
6 claim against SSA because if the assignment between Plaintiff and SSA is invalid, Plaintiff is
7 entitled to declaratory relief and/or breach of contract damages against SSA. (Mot. at 9.) Given
8 Plaintiff's assertion, there is a possibility the state court could find Plaintiff's complaint asserts a
9 cause of action against SSA. Accordingly, the Court finds Hartford's conclusory arguments fail
10 to establish that Plaintiff has not stated a cause of action against SSA, especially given the
11 presumption against finding fraudulent joinder.

12 2. *Realignment*

13 "[W]e are obliged to confront the question of jurisdiction whenever it is apparent that
14 proper alignment of the parties might destroy complete diversity of citizenship. We must align
15 for jurisdictional purposes those parties whose interests coincide respecting the 'primary matter
16 in dispute.'" *Prudential Real Estate Affiliates, Inc. v. PPR Realty, Inc.*, 204 F.3d 867, 873 (9th
17 Cir. 2000) (quoting *Continental Airlines, Inc. v. Goodyear Tire & Rubber Co.*, 819 F.2d 1519,
18 1522–23 (9th Cir. 1987)). It "is hornbook law" that "all challenges to subject-matter jurisdiction
19 premised upon diversity of citizenship [are measured] against the state of facts that existed at the
20 time of filing." *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 570–71 (2004).

21 In this case, Hartford asks the Court to realign SSA as a plaintiff such that there is
22 complete diversity. (Opp'n at 6-7.) Hartford argues that because Plaintiff wants the Court to find
23 SSA's assignment of rights valid, there is no adversarial position between Plaintiff and SSA.

1 (Resp. at 7.) As discussed above, if the assignment between Plaintiff and SSA is deemed invalid,
2 Plaintiff will seek declaratory relief and/or damages from SSA. Thus, although Plaintiff and
3 SSA's interest might be similar, there is also a possibility they will become adversarial. Because
4 of this possibility, realignment is not warranted.

5 Hartford has failed to show fraudulent joinder or the need for realignment. Accordingly,
6 the Court considers SSA a defendant in evaluating diversity of citizenship. Because both Plaintiff
7 and SSA are Washington citizens, complete diversity is lacking. As Hartford identifies no other
8 basis for the Court's jurisdiction, the Court concludes it lacks subject matter jurisdiction over this
9 matter and therefore grants Plaintiff's motion to remand.

10 **C. Request for Attorney's Fees**

11 Plaintiff request an award of its fees associated with removal. (Mot. at 10.) The test for
12 awarding attorney's fees is whether it was objectively reasonable for defendant to remove the
13 case to federal court. *See Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005). "Absent
14 unusual circumstances, attorney's fees should not be awarded when the removing party has an
15 objectively reasonable basis for removal." *Id.* at 136. "Removal is not objectively unreasonable
16 'solely because the removing party's arguments lack merit, or else attorney's fees would always
17 be awarded whenever remand is granted.'" *Grancare*, 889 F.3d at 552, quoting *Lussier v. Dollar*
18 *Tree Stores, Inc.*, 518 F.3d 1062, 1065 (9th Cir. 2008). Although removal is not appropriate in
19 this case, it was also not objectively unreasonable for Defendant Hartford to argue it was. The
20 Court therefore declines to award Plaintiff the requested fees.

21 **IV. CONCLUSION**

22 For the foregoing reasons, Plaintiff's motion for remand (dkt. # 7) is GRANTED. This
23 case is remanded to the King County Superior Court of Washington State.

1 Dated this 10th day of February, 2020.

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4 MICHELLE L. PETERSON
5 United States Magistrate Judge
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